Arrow Uniform Rental *and* Richard Vogel, Petitioner *and* William C. Betzold, Petitioner and Joint Council 43 and Locals 406 and 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO. Cases 7–RD–2508 and 7–RD–2512

September 28, 1990

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On April 19, 1989, the Regional Director for Region 7 issued a Decision and Direction of Election in the above-entitled proceeding in which he directed elections in single location bargaining units despite the parties' history of multilocation collective bargaining. In so doing, the Regional Director relied on the Board's decisions in *Albertson's*[1] and *Albertson's*[2] to find that after an employer timely withdraws from multiemployer bargaining, the parties' multilocation bargaining history is no longer controlling, and the appropriateness of the petitioned-for units is analyzed according to the same community-of-interest factors ordinarily relied on in an initial unit determination.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Unions filed a timely request for review of the Regional Director's decision, asserting that the Regional Director should have directed an election only in an overall unit consisting of the Employer's four outstate facilities. The Unions argued, inter alia, that under *Campbell Soup Co.*,[3] because the parties had bargained on a multilocation basis for the previous 8 years, the petitioned-for units were not coextensive with the previously certified or currently recognized unit. The Unions further argued that the Board's decisions in *Albertson's I* and *Albertson's II* did not permit the parties to disregard their existing multilocation bargaining history. By Order dated May 23, 1989, a panel of the Board[4] granted the Unions' request for review.

On May 26, 1989, the Employer filed a motion for reconsideration of the Board's grant of review, arguing that under the Board's decisions in *Albertson's I* and *Albertson's II* only the petitioned-for single-facility units were appropriate for collective bargaining. On June 22, 1989, the panel granted the Employer's motion for reconsideration but, on reconsideration, affirmed its May 23, 1989 Order granting the Unions' request for review.[5]

The Board has considered the entire record in this case and finds the following.

The Employer is engaged in renting uniforms, linens, and related products. The Employer commenced business with a facility in Detroit. In the early 1970's, the Employer opened its Flint depot, and in the mid-1970s opened the Jackson depot. Prior to 1980, the Employer had signed separate collective-bargaining agreements with local unions covering route-salespersons at the Flint and Jackson depots (the outstate facilities). In 1980, the Employer joined the Michigan Outstate Linen and Industrial Association (the Association), a multiemployer bargaining association. From that point, the Employer's outstate route-salespersons were covered by single multiemployer collective-bargaining agreements, the most recent of which was effective from February 27, 1986 through February 24, 1989. By 1984, the Employer had branches in Jackson, Saginaw, Grand Rapids, and Kalamazoo. These four facilities make up the largest part of the Employer's Michigan division. All four of these locations were acquired after the Employer had entered the multiemployer association.[6] In 1988, the Employer timely withdrew from the Association and notified the Union of its intent to negotiate individual contracts for the outstate branches.

Each of the Employer's branch facilities is headed by a branch manager. Branch managers of facilities within the Employer's Michigan division[7] report to Peter Raab, the president of the Michigan division.[8] Raab visits each branch about six times per year. Although branch managers must obtain approval from Raab to increase their staffing, once approval is granted, the branch managers independently interview and hire staff for the facilities. Branch managers issue oral and written disciplinary reprimands and effectively recommend discipline; however, Raab must approve suspension and discharges. Branch managers control the quality and quantity of training. Branch seniority governs such matters as job bidding, layoff, and recall.

[1] *Albertson's, Inc.*, 270 NLRB 132 (1984).

[2] *Albertson's, Inc.*, 273 NLRB 286 (1984).

[3] 111 NLRB 234 (1955).

[4] Chairman Stephens and Members Higgins and Devaney.

[5] The Employer initially filed an opposition to the request for review, which was rejected by the Executive Secretary's office on May 10, 1989, as exceeding the Board's 50-page limitation. The Employer was advised by that office that its opposition would be considered by the Board if received in the proper format on or before May 24, 1989. The Employer timely filed its opposition on that date. Through administrative error, the Board's May 23, 1989 Order granting the Unions' request for review was issued prior to the extended deadline for receipt of the Employer's opposition. Consequently, as the Unions' Request for Review was improvidently granted, the Board granted the Employer's motion for reconsideration to consider the arguments set forth in the Employer's opposition.

[6] Although the Employer had had a facility at Jackson prior to its entry into the Association, it closed that facility and moved the employees to Battle Creek, Michigan. When, in 1983, the Employer acquired another company's facilities at Jackson and Kalamazoo, it closed Battle Creek and moved those employees to the newly acquired Jackson and Kalamazoo facilities.

The Michigan division also contains one other facility, the Detroit branch, which, unlike the four ''outstate'' facilities, has historically been included in a metropolitan Detroit multiemployer bargaining association.

[7] The Employer has two other divisions, the Illinois/Indiana division and the Ohio/Pennsylvania division; neither is involved in this proceeding.

[8] Until 1987, the Employer had two regional managers for the outstate facilities.

Each outstate facility is serviced by a different Teamsters local, and branch managers deal directly with union business agents regarding negotiation of local issues. Raab has been present at every joint committee grievance hearing and handled the labor negotiations and contract administration for the entire Michigan division. The collective-bargaining agreement contains disciplinary provisions and workplace rules, which are followed at all four branch facilities.

Sales work and public relations are handled differently at each branch. All branches receive the same marketing brochures from Detroit, although they tailor sales brochures to their own needs. Managers determine the sales materials from a menu offered by the Employer, depending on the local economy. However, local managers may not refuse to accept product lines offered by the Employer, although they do have discretion regarding product mix. The local managers receive recommended or preferred selling prices for the products from the central office, but they have some discretion to vary prices. Branch managers control and develop their own sales programs, although Raab retains ultimate approval of sales promotions and sales materials. Sales contests and prizes are devised by branch managers, who are given a general budget for such contests. All stock is purchased centrally, and copies of all records are kept in Detroit. Each branch, however, is separately charged for stock and has a separate account. Paychecks are issued from the Detroit office and distributed by the local managers. All four facilities use the same blank forms from Detroit, although they occasionally design their own. The Employer has a policy requiring an approved work uniform, but managers have discretion to permit variations depending on the circumstances. All four branches utilize trucks with the same logo, and use the laundry facility located in Detroit.

The Employer utilizes the same four factors to evaluate profit at all of its outstate facilities, i.e., pricing, contract level, new sales, and business retention, although average earnings differ among the branches. Wages vary significantly among employees. The amount of the employees' commissions is affected by an older two-tiered wage structure ''grandfathered'' by the more recent contracts, the account size, and the customer mix. Working conditions, such as hours of employment, are different, and operational procedures vary from branch to branch, including policies for reporting to work, weekly meetings, procedures for loading and unloading, disciplinary procedures, handling of accounts receivable, and ''checking in'' paperwork. For example, in Kalamazoo and Saginaw, the employees report to work at specific times. By contrast, in Grand Rapids and Jackson, employees are given parameters within which to arrive depending on their route assignments. The Employer utilizes the same criteria to evaluate its employees regardless of the branch.

Geographic distances between the facilities range from 50 to 116 miles. There is no evidence of any regular contact among employees at the outstate branches. There have been only two transfers between branches, and the transferees did not retain their seniority after the transfers, but rather assumed the lowest rung on the seniority ladder at their new branch.

It is well established that a decertification petition must be coextensive with the recognized or certified bargaining unit.[9] Thus, as a general rule, a decertification petition for a single-facility location will be dismissed if that location's bargaining history has occurred within a *multilocation unit* of the employer's employees for more than a year.[10] With respect to a recognized *multiemployer unit*, however, an exception is made for an employer who has timely withdrawn from the multiemployer association. Thus, a petition covering a unit of a single employer's employees will not be dismissed on the ground that it is not coextensive with the multiemployer unit if the petition is filed, as here, after the employer's timely withdrawal.[11]

This case concerns a multilocation employer whose bargaining history on a multilocation basis has taken place within a multiemployer association. The issue is whether, after the employer's timely withdrawal from the association, the multilocation bargaining history within the association makes the multilocation unit the recognized unit with which a decertification petition must be coextensive.

The Regional Director, relying on *Albertson's I* and *Albertson's II*, found that the parties' multilocation bargaining history was not dispositive. Thus, he analyzed the instant decertification petitions without reference to that history, using the same factors ordinarily relied on in assessing the propriety of a petitioned-for single unit; and he concluded that the petitioned-for single location units were appropriate. Because he regarded it as irrelevant whether the multilocation unit that had formed the basis for the parties' bargaining

[9] *Delta Mills*, 287 NLRB 367, 368 (1987); *Campbell Soup Co*., 111 NLRB 234 (1955).

[10] *Gibbs & Cox*, 280 NLRB 953 (1986); *Anheuser Busch, Inc*., 246 NLRB 29 (1979); *Westinghouse Electric Corp*., 227 NLRB 1932 (1977); *Gould-National Batteries*, 150 NLRB 418 (1964). As *Gould-National* indicates, this rule permits the merger even of units that were originally separately certified prior to their inclusion on the multilocation unit. In the present case, however, there had been no Board certification at any of the four locations at issue. Moreover, although there had been bargaining for a separate agreement at the Jackson location prior to the Employer's entry into the multiemployer association, that was not the same Jackson facility in existence when the Employer withdrew from the Association. (See fn. 6, supra.)

[11] *Union Fish Co*., 156 NLRB 187, 192–193 (1965) (directing election on RD petition for single-employer unit, where employer had timely withdrawn from multiemployer association). Compare *Kroger Co*., 148 NLRB 569 (1964) (dismissing decertification petitions for a unit consisting of employer's stores because employer's attempted withdrawal from the multiemployer association was untimely), and *Mo's West*, 283 NLRB 130 (1987) (same). See generally *Retail Associates*, 120 NLRB 388 (1958) (stating rule concerning timeliness of withdrawal).

history for 8 years would also be an appropriate unit, he directed an election on the two decertification petitions; one for the location at Grand Rapids and the other for the one at Saginaw. For the following reasons, we disagree with the Regional Director's analysis and result.

In *Albertson's I*, the Board held that once the employer withdrew from the multiemployer group, the multilocation bargaining history was not ''binding'' on the employer's stores previously covered by the multiemployer contracts.[12] The Board found that the employer's stores formerly covered by the multiemployer contract would not have been an appropriate multifacility unit for purposes of collective bargaining in an initial unit determination.[13] Consequently, the Board disregarded the parties' prior bargaining history and concluded that the petitioned-for single store units were presumptively appropriate as there was no prior Board certification of the multistore unit, no particular geographic cohesiveness among the stores, and no evidence of a multistore contract or multistore recognition by the employer.[14] In *Albertson's II*, the Board clarified its decision in *Albertson's I*, reiterating that upon timely withdrawal, the employer was free to reassess the scope of the appropriate bargaining unit, particularly where, as in that case, the multilocation group covered under the prior collective-bargaining agreement was not one which the Board would originally certify.

The Board seeks to balance employees' rights guaranteed by Section 7 of the Act with the goal of fostering stability in established bargaining relationships.[15] Generally, if there is evidence that the parties have included two or more plants in a single collective-bargaining agreement, the bargaining history becomes controlling, and the only appropriate unit becomes the one consisting of all the employees covered under the agreement.[16] The existence of a multilocation bargaining history precludes severing the employees of any given location from the overall multiplant unit, and the Board has determined that even a 1-year bargaining history on a multiplant basis can be sufficient to bar a single-unit election.[17] Contrary to the Regional Director, we do not believe that the decisions in *Albertson's I* and *Albertson's II* permit parties *in all circumstances* to disregard their bargaining history and reassess, without consideration of that history, the scope of the bargaining unit after an employer timely withdraws from a multiemployer bargaining unit. Significantly, in *Albertson's* the Board repeatedly emphasized the fact that the multiplant bargaining unit would have been found to be inappropriate in an initial unit determination. However, where the multilocation bargaining unit is one which the Board would find to be an appropriate unit in an initial unit determination, unlike in *Albertson's*, the multilocation bargaining history is ordinarily determinative, and a petition seeking a different unit properly is dismissed.[18] By contrast, where the bargaining unit is one which the Board would not certify, such as occurred in *Albertson's*, parties are free to reassess the scope of the bargaining unit utilizing traditional community-of-interest criteria.[19] This view is consistent with prior Board precedent in which we have declined to give controlling weight to the parties' bargaining history when the unit is inappropriate under the Act,[20] as well as consistent with Albertson's.[21]

In the instant case, the evidence establishes that the existing multiplant bargaining unit comprised of the outstate facilities is *an* appropriate bargaining unit for purposes of collective bargaining. We note at the outset that the four facilities in the historical unit constitute 80 percent of the Employer's Michigan division and that the Detroit branch, not in that unit, has been represented in a Detroit-area multiemployer unit. On the question of appropriateness, this marks a significant distinction from the situation in *Albertson's* (see fn. 12, supra). Admittedly, there has been almost no interchange between the outstate facilities and only two transfers, and the branch managers possess considerable autonomy. The branch managers, however, are prohibited from suspending or discharging employees on their own authority; rather, they must obtain prior approval from Raab to do so. Also, Raab decides the staffing levels of each facility within the Michigan division, and retains final control over sales procedures. Branch managers may not refuse to carry product lines offered by central management, although they do possess some discretion to determine the product mix. In addition, the Employer sets uniform criteria to evaluate managers and employees at all four branches. The outstate branches receive all forms from the Detroit branch, order all supplies from Detroit, and are issued checks from Detroit. There is also a standard uniform

[12] 270 NLRB at 133.

[13] The Board found that these stores formed less than one-quarter of the employer's Idaho division, other stores in that area were not represented or covered by the multiemployer contract, and management at each store hired, fired, trained, and directed employees, and controlled the few interstore transfers. Id.

[14] The Board recognized, however, that relevant bargaining history even in an inappropriate unit may override traditional criteria when the parties agree to establish such a unit and the agreement is demonstrated by clear and unmistakable evidence of mutual intent. Id.

[15] See *Gibbs & Cox*, 280 NLRB 953, 954–955 (1986).

[16] Id.

[17] See *Anheuser-Busch, Inc*., 246 NLRB at 32; *Westinghouse Electric Corp*., 227 NLRB 1932 (1977); *Gould-National Batteries*, 150 NLRB 418 (1964).

[18] See *Anheuser-Busch, Inc*., supra.

[19] Members Cracraft and Devaney agree that the *Albertson's* cases are distinguishable but would not pass on their continued (but limited) viability.

[20] Cf. *Los Angeles Bonaventure Hotel*, 235 NLRB 96 (1978), in which the Board declined to give controlling weight to bargaining history because the multiemployer collective-bargaining agreement covered both guards and nonguards, a unit which is per se inappropriate under the Act.

[21] This interpretation also squares more readily with *Gibbs & Cox*, in which the Board stressed that a pattern of multilocation bargaining should not suffer disturbance merely by the fiat of one of the parties. 280 NLRB at 955.

for route salespersons, although branch managers have the discretion to permit variation depending on the circumstances. Based on the above, we find that the historical multiplant unit is *an* appropriate unit for bargaining, rather than one which the Board would *not certify*.[22] That the petitioned-for single facility units may also be appropriate, or perhaps even more appropriate, does not negate the appropriateness of the historical multilocation unit. Accordingly, as the multilocation unit is one which the Board would certify, this case is not governed by *Albertson's I* and *Albertson's II*.

[22] See *NLRB v. Carson Cable TV*, 795 F.2d 879 (9th Cir. 1986).

In view of the foregoing, we conclude that the parties' 8-year history of bargaining on a multilocation basis—the only basis on which the Employer has bargained over the employees at these locations—is controlling. Consequently, the decertification petitions seeking single-location bargaining units are not coextensive with the existing multilocation bargaining unit and, therefore, must be dismissed.[23]

ORDER

The Regional Director's Decision and Direction of Election is reversed, and the petitions are dismissed.

[23] See *Campbell Soup*, supra.